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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/809,019   | 03/25/2004  | Patricia Desenne     | LOREAL 3.0-014      | 7810             |
| 530  | 7590        | 04/10/2006           | EXAMINER            |                  |
| LERNER, DAVID, LITTENBERG,<br>KRUMHOLZ & MENTLIK<br>600 SOUTH AVENUE WEST<br>WESTFIELD, NJ 07090 |             |                      | ELHILO, EISA B      |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 1751                |                  |

DATE MAILED: 04/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |                                       |  |
|------------------------------|--------------------------------------|---------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/809,019 | <b>Applicant(s)</b><br>DESENNE ET AL. |  |
|                              | <b>Examiner</b><br>Eisa B. Elhilo    | <b>Art Unit</b><br>1751               |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 11/4/2004
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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Claims 1-61 are pending in this application.

### **DETAILED ACTION**

#### ***Claim Rejections - 35 USC § 103***

1 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cottard et al. (US' 2001/0023515 A1) in view of Riedel et al. (US' 6,156,296).

Cottard et al. (US' 514) teaches an aqueous hair dyeing composition comprising oxidation dye such as paraphenylenediamine as claimed in claims 1, 9, 42 and 51 (see page 6, paragraph, 0109), wherein the oxidation dye presents in the amount of 0.0005 to 12% and 0.005 to 8% by weight as claimed in claims 10-11 (see page 8, paragraph, 0155), couplers such as meta-phenylenediamine as claimed in claims 12-13 and 43-44 (see page 8, paragraph, 0156), wherein the coupler presents in the amount of 0.0001 to 10% and 0.005 to 5% which within the claimed range as claimed in claims 14-15 (see page 8, paragraph, 0158), direct dyes such as anthraquinone dyes in the amounts of 0.01 to 10% by weight which is within the claimed range as claimed in claims 16-17 and overlapped with the claimed range as claimed in claim 18 (see page 8, paragraph, 0160), aqueous medium comprises organic solvents such as alkyl ether of diethylene glycol in the amount of 0.5 to 20% 2 to 10% by weight as claimed in claims 19-23 (see page 17, paragraphs, 0334-0336), cationic polymers (conditioning polymers) in the amounts of 0.01 to 10% and 0.05 to 5% by weight as claimed in claims 24-27 and 45 (see page 12,

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paragraphs, 0237-0240), surfactants in the amounts of 0.01 to 40% and 0.1 to 30% by weight as claimed in claims 28-31 and 46 (see page 17, paragraph, 0331), amphiphilic polymer of hydroxypropylguars modified by at least one group comprising at least one fatty chain (ESAFLOR HM 22) as claimed in claims 23-33 (see page 4, paragraph, 0076), wherein the amphiphilic polymers are present in the amounts of 0.01 to 10% which within the claimed ranges as claimed in claims 34-35 and 47 (see page 5, paragraph, 0104), thickening polymers such as xanthan gum and scleroglucan gum in the amounts of 0.01 to 10% as claimed in claims 36-39 and 48 (see page 17, paragraphs, 0332-0333), basifying agents such as aqueous ammonia in the amount of 11.1% which within the claimed range as claimed in claims 40-41 and 49-50 (see page 19, paragraph, 0363), oxidizing agents such as hydrogen peroxide, perborates and peroxides as claimed in claims 52-55 (see page 18, paragraphs, 0349 and 0342), wherein the content of the oxidizing agent is 7.5% which within the claimed range as claimed in claims 56-58 (see page 19, paragraph, 0362). Cottard et al. (US' 514 A1) also teaches a method and a device for dyeing hair comprising the dyeing composition as described above and wherein the method and the kit are similar to those claimed in claims 59-61 (see page 18, paragraph, 00349 and page 2, paragraphs, 0020-0026).

The instant claims differ from the reference by reciting a composition comprising at least one compound of a claimed formula (I).

However, Cottard et al. (US' 514 A1) suggests the use of organic and inorganic acids in the hair dyeing composition (see page 18, paragraph, 0348). It is further taught by Cottard et al. that the composition may further comprise an effective quantity of other agents that are already known for oxidation coloration (see page 17, paragraph, 0345).

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Riedel et al. (US' 296) in analogous art of hair coloring formulation (see col. 10, lines 32-33), teaches a composition comprising galactaric (mucic) acid and galactonic acid that represent the claimed formula (I) as claimed in claims 1-6 (see col. 5, lines 44-50) and wherein the acids are presented in the amounts of 1 to 10 % which within the claimed range as claimed in claim 7 and overlapped with the claimed range as claimed in claim 8 (see col 13, claim 9).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the composition of Cottard et al. (US' 515 A1) by incorporating the carboxylic acids as taught by Riedel et al. (US' 296) to arrive at the claimed invention with reasonable expectation of success to care for the individual hair as well as improving the appearance of the hair and would expect such a composition to have similar properties to those claimed, absent unexpected results.

### *Conclusion*

The references listed on from PTO-1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above.

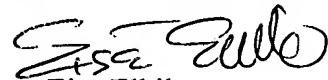
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo  
Primary Examiner  
Art Unit 1751

April 6, 2006